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THE LAW SCHOOL. — An unusual number of changes in courses are announced for the current year. With a view to making the course on Trusts one for Third Year men, it is this year omitted. What was formerly the course on Carriers has been expanded into a course on Public Service Companies which will be given two hours each week during the whole year by Professor Beale and Professor Wyman. Insurance, again under Professor Wambaugh, has been reduced to a half course to be given during the first half-year. A new instructor appears in Mr. Joseph Warren, LL.B. 1900, a former editor of this Review, who will assist in the course on Criminal Law and conduct the course on Persons. Two new regular courses are offered. That on International Law as administered by the Courts will be given by Professor Wambaugh one hour a week during the entire year, and that on Patent Law by Mr. Stackpole, LL.B. 1898, who has before given the same course, two hours a week during the first half-year. As extra courses will be given a course on Massachusetts Practice, and a course on the Law of Mining and Irrigation, the instructors in which have not yet been chosen.

THE PROPOSED INCOME TAX AMENDMENT. — The Federal Constitution provides that "the Congress shall have power to lay and collect taxes, duties, imposts and excises . . . but all duties, imposts and excises shall be uniform throughout the United States";[1] and that "no direct tax shall be laid unless in proportion to the census or enumeration hereinbefore

[1] Art. I, § 8, par. 1.

directed to be taken."[2] Following an early statement by the Supreme Court that it is Great Britain "from whence we take our general ideas of taxes, duties, imposts, excises, customs, etc.,"[3] and a later declaration by the Supreme Court that for purposes of determining its validity a tax should be classified according to its practical results rather than according to economic theories,[4] it has been convincingly pointed out in a recent article in this Review that legally and historically the only distinction to be taken is between taxes which are to be apportioned and taxes which are to be uniform; that at the time of the Constitutional Convention the name "direct tax," or simply "tax," properly applied only to the former, while the latter ranked as "duties."[5] In effect, then, the Constitutional provision is that all taxation must fall under one or the other of these two heads; and that every "tax" must be apportioned, and every "duty" uniform.

The legal history of the income tax in this country divides itself into three periods. In 1796 the Supreme Court decided that an act laying certain "annual duties and rates" on the use of personal property[6] was constitutional, although operating uniformly, for the reasons that apportionment was not practical, and that such a tax was a "duty" within the English meaning of that word.[7] When the income taxes imposed after the Civil War were attacked, the principle of this early case was extended: in a series of decisions the Supreme Court held that a general income tax upon both real and personal property need not be apportioned, but was a duty, and as such correctly levied under the rule of uniformity.[8] But when the validity of the general income tax of 1894 was called into question, the Supreme Court held that so much of it as applied to rents and income from real estate was void as being a tax which should be apportioned; and that, part of the act being thus void, the whole was invalid.[9] In other words, that part of a general income tax appertaining to realty was declared by the earlier court to be a "duty," while the later court pronounced it a "tax."

The proposed Sixteenth Amendment to the Constitution, which has been passed by Congress and ratified by one state, provides that "the Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration."[10] Apportionment is here expressly excluded, while because of the use of the word "taxes," the requirement of uniformity which applies only to "duties, imposts and excises" cannot, without straining of legal construction, be imposed. Thus the proposed amendment presents the anomaly of a Federal power of taxation absolutely unrestricted, and entirely opposed to the principle of the Constitution requiring either the rule of apportionment or the rule of uniformity to govern in every instance. The amendment seems to be open at least to the

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[2] Art. I, § 9, par. 4.
[3] Hylton *v.* U. S., 3 Dall. (U. S.) 171, 174–5, 181.
[4] Nicol *v.* Ames, 173 U. S. 509, 515–6; Knowlton *v.* Moore, 178 U. S. 41, 83.
[5] 20 HARV. L. REV. 292–6.
[6] 1 Stat. at L. 373, c. 32.
[7] Hylton *v.* U. S., *supra*, p. 175.
[8] Pacific Ins. Co. *v.* Soule, 7 Wall. (U. S.) 433; Veazie Bank *v.* Fenno, 8 Wall. (U. S.) 533; Scholey *v.* Rew, 23 Wall. (U. S.) 331; Springer *v.* U. S., 102 U. S. 586.
[9] Pollock *v.* Farmers Loan & Trust Co., 157 U. S. 429; 158 U. S. 601.
[10] 44 Cong. Rec. 4509, S. J. Res. 40.

criticism of inartistic drafting; for in view of the pre-eminence of the United States Constitution in the carefulness and conciseness of its language, it is a little to ask that amendments be made to conform to the original text.

APPLICATION OF THE RULE IN SHELLEY'S CASE TO GIFTS OF PERSONAL PROPERTY. — "When the ancestor by any gift or conveyance taketh an estate in freehold and in the same gift or conveyance an estate is limited either mediately or immediately to his heirs in fee or in tail, 'the heirs' are words of limitation of the estate and not words of purchase." [1] This doctrine, known as the Rule in Shelley's Case, has with some qualifications long governed the limitation in deeds and wills of equitable as well as legal estates; [2] and after much controversy it is now settled to be not a mere rule of construction, but a rule of law overriding the intent of the settlor.[3] Although subjected to much adverse judicial comment, and modified or abolished by statute in the majority of our states, the rule as to realty still holds in England and several jurisdictions of this country.[4]

The direct application of the Rule in Shelley's Case to gifts of personal property would be impossible. Aside from any argument based on the much controverted origin of the rule,[5] and the difference in the rules governing future interests in realty and personalty,[6] the very terms "heirs" and "heirs of the body" are inapplicable to personalty.[7] But on its indirect application to personalty[8] the authorities are in great confusion. Much apparent conflict, however, may be explained away. In the first place many decisions cited as authorities for and against the applicability of the rule to personalty are based upon facts which do not include, as they should in order to raise the question, all the requirements which would be necessary for the operation of the rule in realty.[9] Again, many seemingly irreconcilable cases turn upon the construction of wills, and so may be reduced to mere differences in interpretation by the judges of the language employed.[10] And finally much conflict between the early and later decisions is due to the tendency of modern courts to carry out the evident intent of the testator at the expense of technical rules of law.

Though the countless variations in the language used prevent a full classification, the cases most frequently cited for the application of the Rule in Shelley's Case to personalty may be grouped into three divisions. (1) Where the gift is to A for life and after his decease "to his executors,

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[1] 1 Rep. 93 b.

[2] Van Grutten *v.* Foxwell, [1897] A. C. 658; *In re* Youman's Will, [1901] 1 Ch. 720; 2 Washburn, Real Prop., 6 ed., § 1601, § 1610.

[3] Perrin *v.* Blake, 1 W. Bl. 671; Carpenter *v.* Van Olinder, 127 Ill. 42. See 11 HARV. L. REV. 418.

[4] Van Grutten *v.* Foxwell, *supra;* Jones *v.* Rees, 69 Atl. 785 (Del.). See Washburn, Real Prop., 6 ed., p. 567 note, for list of U. S. statutes.

[5] Van Grutten *v.* Foxwell, [1897] A. C. 658, 667.

[6] Gray, Rule Perp., 2 ed., §§ 71–98; Williams, Pers. Prop., 16 ed., 356.

[7] Williams, Pers. Prop., 16 ed., 363.

[8] The cases seem to draw no distinction between chattels real and chattels personal.

[9] Thus words similar to those used in the following cases as to personalty would not have fallen within the rule if used as to realty. Bennett *v.* Bennett, 217 Ill. 434; Vogt *v.* Vogt, 26 App. D. C. 46; Hughes *v.* Cannon, 21 Tenn. 589.

[10] *See* Jones *v.* Rees, *supra,* quoting 4 Kent, Comm., 12 ed., 534.